

HUSCH BLACKWELL

Elizabeth A. Bozicevic
Partner

190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Direct: 314.480.1844
Fax: 314.480.1505
elizabeth.bozicevic@huschblackwell.com

October 28, 2021

VIA ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: *New York City Transit Authority v. Express Scripts, Inc.*
No. 1:19-cv-05196-JMF (S.D.N.Y.)

Dear Judge Furman:

On behalf of Defendant Express Scripts, Inc. ("Express Scripts"), and pursuant to Section 6 of the S.D.N.Y.'s Electronic Case Filing Rules and Section 7 of the Court's Individual Rules and Practices in Civil Cases, I write regarding Express Scripts' re-filing of certain exhibits submitted in support of its motion for summary judgment and ask that such exhibits be filed under seal.

On March 31, 2021, Express Scripts filed its motion for summary judgment. (ECF Nos. 108-112). In support of that motion, Express Scripts attached Exhibit 1, which is the contract between NYCTA and Express Scripts. (ECF Nos. 112-1 – 112-4 (redacted); 116-1 – 116-11, 117-1 (sealed)). Express Scripts had previously filed this document in a redacted format as an exhibit to its motion to dismiss, and Express Scripts sought leave to redact the document in the same manner and for the same reasons. (ECF No. 108). Due to the size of the contract and to ECF filing restrictions, Express Scripts was required to file the contract in multiple exhibits.

Incorporated into the contract and included within Exhibit 1 were several spreadsheets. In order to file these spreadsheets, they were condensed to fit into a standard PDF 8x11 page. Express Scripts attached the version of the contract that had been used as an

HUSCH BLACKWELL

exhibit in depositions. However, as a result of the condensing of the spreadsheets, some were difficult to read in places.

On October 27, 2021, the Court asked Express Scripts to re-file legible versions of some portions of Exhibit 1 and provide OCR-searchable versions of those documents if possible. (ECF No. 138). Express Scripts was unable to change the version of the contract attached as Exhibit 1 in order to make it more legible. However, Express Scripts identified a different version of the parties' contract that was in color as opposed to black and white, and that version is easier to read. This color version is the copy of the contract that Express Scripts previously attached to its motion to dismiss. (ECF Nos. 17-1 (sealed); 23-26 (redacted)).

Express Scripts has attempted to make this color version OCR-searchable, but that search still does not capture all of the words in the PDF'd spreadsheets. Additionally, the spreadsheets listing specialty drug information remain difficult to read in places. If the Court is still unable to review the language in the color version of the contract that Express Scripts files today, or if the Court wants a perfectly searchable copy, for the Court's convenience, Express Scripts can provide the court with the native spreadsheet from which the PDFs of the contract were created. This spreadsheet was produced by Express Scripts at Bates number Express_Scripts_1095_00003625.

Express Scripts understands the Court's October 27, 2021 order to be asking Express Scripts to refile just the under-seal versions of Exhibit 1. Express Scripts, therefore, respectfully asks that the color version of Exhibit 1 it files today to be similarly permitted to be filed under seal, for the reasons set forth in Express Scripts' request to seal filed on March 31, 2021 at ECF No. 108. A public, redacted version of Exhibit 1 was previously filed by Express Scripts at ECF Nos. 112-1 – 112-4.

Attached hereto, Express Scripts files under seal the following:

- | | |
|------------------|---|
| Exhibit 1 | New version of ECF No. 116-5 (summary judgment Ex. 1, part 5) |
| Exhibit 2 | New version of ECF No. 116-6 (summary judgment Ex. 1, part 6) |
| Exhibit 3 | New version of ECF No. 117-1 (summary judgment Ex. 1, part 7) |
| Exhibit 4 | New version of ECF No. 116-7 (summary judgment Ex. 1, part 8) |
| Exhibit 5 | New version of ECF No. 116-8 (summary judgment Ex. 1, part 9) |
| Exhibit 6 | New version of ECF No. 116-9 (summary judgment Ex. 1, part 10) |
| Exhibit 7 | New version of ECF No. 116-10 (summary judgment Ex. 1, part 11) |

HUSCH BLACKWELL

Accordingly, Express Scripts respectfully asks that the Court maintain the confidentiality of Exhibit 1 to Express Scripts' summary judgment motion, asks that those documents be allowed to remain under seal, and to notify Express Scripts if the Court wishes Express Scripts to provide the Court with the native spreadsheet used to create the exhibit.

Respectfully submitted,

/s/ Elizabeth A. Bozicevic

Elizabeth A. Bozicevic

The motion to seal is granted temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motion. The Clerk of Court is directed to terminate ECF No. 139.

SO ORDERED.

A handwritten signature in black ink, appearing to read "J. M. Smith", is written over the text "SO ORDERED." and the date.

October 29, 2021